

**Letter of Findings: 04-20120361P
Negligence Penalty
For Tax Period May 31, 2012**

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the negligence penalty.

STATEMENT OF FACTS

Taxpayer is a retail store, which sells tangible personal property in Indiana. As a retail merchant, Taxpayer is required to file its Indiana sales tax returns, ST-103 forms, and to remit the sales tax it collects, in this case, within twenty (20) days after the end of the month.

Taxpayer timely filed its sales tax return for the tax period May 2012 on June 18, 2012. However, Taxpayer did not remit the sales tax to the Indiana Department of Revenue ("Department") until June 21, 2012, which was one day after the statutorily required filing due date, June 20, 2012. As a result, the Department assessed Taxpayer additional penalty and statutory interest.

Taxpayer requested that the Department abate the negligence penalty. A phone hearing was conducted. Taxpayer was given additional time to provide additional documentation to support its protest, but it did not do so. As a result, this Letter of Findings is based on the information within Taxpayer's protest file and the Department's records. Further facts will be supplied as required.

I. Tax Administration – Negligence Penalty.

DISCUSSION

The Department's audit imposed a ten percent negligence penalty for the tax period in question. Taxpayer requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) **fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;**
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department. (**Emphasis added**).

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty

assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, Taxpayer stated that "It was oversight and was paid next day." The Department's records also confirm that Taxpayer remitted the sales tax due for May 2012 tax period on June 21, 2012—one day after the statutory due date. Given the facts that Taxpayer promptly remitted the sales tax after it discovered its oversight, although it was one day after the filing due date, the Department is willing to abate the penalty for this time only.

Taxpayer is on notice that, going forward, it will be responsible for the negligence penalty if it fails to timely file the returns and pay the taxes due as statutorily required.

FINDING

Taxpayer's protest of the imposition of negligence penalty is sustained. The Department will abate the penalty for this time only.

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